

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members

FROM: Angie Grove, Deputy Legislative Auditor, Performance Audits

DATE: September 2008

CC: Linda McCulloch, Superintendent of Public Instruction
Bob Runkel, Assistant Superintendent, Department of Education Services
Tim Harris, Administrator, Special Education Division

RE: Performance Audit Follow-up 09SP-04: Oversight of Special Education Services, Office of Public Instruction (orig. 05P-01A)

ATTACHMENT: Original Performance Audit Summary

INTRODUCTION

In December 2005, we presented our performance audit of Oversight of Special Education Services. The audit made eight recommendations to the Office of Public Instruction (OPI). In December 2006, we asked OPI management for an update on progress in implementing the recommendations. Based on this preliminary information, we decided to delay further follow-up audit work in order to allow OPI more time to implement recommendations and operate under new procedures resulting from changes made. In July 2008, we conducted further follow-up work to verify the implementation status of recommendations made in the original audit report. This memo summarizes the results of our follow-up work in addition to presenting background information on the program.

Overview

Audit recommendations focused on improving compliance monitoring procedures and documentation. The Special Education Division within the Office of Public Instruction is responsible for special education compliance monitoring in Montana's school districts. OPI has made changes in operations to address the recommendations made in our performance audit. Of the eight recommendations, seven have been implemented and one is being implemented.

BACKGROUND

Federal law contains the requirements that govern special education. The Individuals with Disabilities Education Act (IDEA) was enacted by Congress in 1997. The purposes of IDEA, among other things, are to ensure all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs, and to ensure the

rights of children with disabilities and parents of such children are protected. Section 20-7-401, MCA, defines “special education” as specially designed instruction to meet the unique needs of a child with a disability, at no cost to the parents or guardians, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education. This law defines a “child with a disability” as a child evaluated in accordance with the regulations of IDEA as having a disability and who because of the disability needs special education and related services. A disability alone does not qualify a child for special education; a child with a disability must need special education and related services in order to qualify.

School districts are responsible for delivery of special education services. A child with a disability must be identified, referred, and evaluated, and if eligible, an educational plan must be developed and implemented. The individualized education program (IEP) is the main plan of action for a child with a disability receiving special education. In Montana, each IEP is developed and implemented by a team of professionals from the child’s school, including the parents of the child. According to section 20-7-403, MCA, the Superintendent of Public Instruction shall supervise and coordinate the conduct of special education in the state. The Special Education Division within OPI is assigned this responsibility. Division personnel have established a general supervision system including various components and activities. Compliance monitoring is the main oversight role in the delivery of special education. Division personnel review special education student records at school district facilities to determine compliance with federal and state laws and rules. The compliance monitoring process can be divided into three general areas: 1) pre-site activities, 2) on-site activities, and 3) post-site activities.

FOLLOW-UP AUDIT FINDINGS

The performance audit report contained eight recommendations to OPI including one regarding pre-site activities, two regarding on-site activities, two regarding post-site activities, and three regarding documentation. The following summarizes information relating to follow-up audit work and the implementation status of recommendations.

Recommendation #1

We recommend OPI:

- A. Establish specific details of sample selection to help ensure the requirements of IDEA are met, including purpose, coverage, and types of records to review.**
- B. Establish controls over pre-selection of student records.**
- C. Incorporate previous monitoring findings and district comparisons into the sampling process to help assess current compliance.**

Implementation Status – Implemented

Special Education Division personnel created a records selection protocol which outlines the order in which records are selected. The Compliance Monitoring Process guide provides a description of the records selection process. The guide indicates the number of student records sampled will be proportional to the number of licensed special education teachers and speech pathologists providing special education and related services in the district. The minimum sample reviewed will be twice the number of these teachers and pathologists, with larger samples selected if characteristics of the student population and other circumstances warrant additional review. The televideo conference, conducted by the division each fall, discusses the student record review in detail and provides attendees the opportunity for discussion. The protocol indicates student records will not be requested more than seven days prior to the monitoring visit. Finally, division monitors are to review previous district findings prior to monitoring visits;

however, previous monitoring findings will be five years old due to the division's established monitoring cycle, so information may be outdated.

Recommendation #2

We recommend OPI ensure the appropriateness of all school district eligibility determinations.

Implementation Status – Implemented

The division created a guided record review (GRR) form for use by monitors. The GRR form explains how to answer each question on the student record review form, including those related to eligibility. A required training was conducted for all monitoring staff to establish consistency on student record reviews. The division has a guide for special educators which includes answers to common questions regarding eligibility criteria, related Montana administrative rules and federal regulations, and eligibility criteria checklists. In addition, division personnel continue to work with school district personnel to educate them on eligibility criteria.

Recommendation #3

As part of the on-site monitoring process, we recommend OPI determine if proper procedures were followed and criteria addressed for school district eligibility determinations for ineligible children.

Implementation Status – Implemented

Students evaluated by school district personnel and determined to be ineligible for special education services was added to the division's Students With Unique Concerns (SWUC) form. According to the division's Compliance Monitoring Process guide, the SWUC form identifies students whose needs call for particular attention, and the review of these records will identify whether appropriate procedures were implemented. School district personnel complete the SWUC form and return it to the OPI prior to a scheduled compliance monitoring. To date, the division has not identified any issues in relation to school district determinations of ineligibility.

Recommendation #4

We recommend OPI:

- A. Formalize the division debriefing meeting.**
- B. Develop a standardized methodology for compiling results of on-site record reviews.**
- C. Develop policy and standards for determining school district compliance, including establishing reference points for noncompliance.**
- D. Modify policy to clearly describe actions to take when monitoring specialists question school district eligibility determinations.**

Implementation Status – Implemented

The division has developed a standardized process for compiling compliance monitoring results. The lead monitor for each compliance monitoring uses the new format to compile results of the student record reviews. The spreadsheet includes each area from the student record review form and documents the number of records which were not in compliance. The spreadsheet automatically calculates the percentage of records out of compliance. The division has established a threshold of 17 percent out of compliance for making a determination on whether there is a systemic problem. Any percentage higher than 17 percent is automatically marked in red on the spreadsheet. Information from the spreadsheet is compiled into a summary, and the summary spreadsheet is discussed at the debriefing meeting. As in the past, the

debriefing meetings include all monitors and the unit manager, and all decisions made are a consensus of the group.

Recommendation #5

We recommend OPI strengthen the monitoring process by:

- A. Designating a supervisor with responsibility for oversight of day-to-day staff activities.**
- B. Reviewing staff procedures to ensure adherence to established policies and procedures.**

Implementation Status – Implemented

The Special Education Division reorganized into three units, each with a manager. The School Improvement Unit Manager is involved in all aspects of compliance monitoring including compliance monitoring trips, both to observe and to participate, debriefing meetings, and corrective action and follow-up. This involvement allows the unit manager to review operations on an ongoing basis.

Recommendation #6

We recommend OPI mandate use of a standard set of forms statewide.

Implementation Status – Being Implemented

In 2006, OPI contracted for a statewide student information system, AIM (Achievement in Montana). As part of AIM, OPI contracted for development of a Special Education module. This module will:

- enable teachers and related service providers to electronically complete all special education documentation requirements
- provide useful tools for case management
- support compliance monitoring
- automate most federally required data collections such as Child Count

According to division personnel, completion of the AIM Special Education module is behind schedule, and the actual date of completion is unknown at this time. Division personnel will have to test the system to ensure it works as required prior to rollout and use. Once the system is operating, the division plans to mandate its use by all school district personnel. The standard set of forms within the module will then be used statewide.

Recommendation #7

We recommend OPI:

- A. Develop policy to clarify how the student record review form should be completed.**
- B. Implement an ongoing supervisory review component to ensure consistency and completeness of the form.**

Implementation Status – Implemented

As mentioned previously, the division created a guided record review (GRR) form for use by monitors. The GRR form explains how to answer each question on the student record review form. A required training was conducted for all division monitoring staff to help establish consistency on completing student record reviews. Each monitor is required to use the GRR form at least once for each monitoring visit. In addition, each completed record review form is reviewed and signed by another compliance

monitor for completion. All forms are then tabulated by the lead monitor. The GRR form is also used during school district training.

Recommendation #8

We recommend OPI:

- A. Develop policy to guide staff on analyzing student records to determine if proper documentation exists regarding the REED.**
- B. Eliminate the REED form.**

Implementation Status – Implemented

Federal law requires a review any existing evaluation data as part of the process to determine if a child is or continues to be a child with a disability and in need of special education and related services. The division referred to this review as the REED and developed a form to document the review. During the original audit we noted while the form was not required by federal law, division monitors were issuing school districts findings of noncompliance if the form was not used. In response to this recommendation, the division incorporated documentation of the review in the Individualized Education Program for each student and eliminated the REED form. According to division personnel, they have not issued a finding of noncompliance related to this requirement since making the change.

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